SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

10/15/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2002-000198

FILED: _____

STATE OF ARIZONA

KAREN B KEMPER

v.

SEAN URIAN SPILLMAN

SEAN URIAN SPILLMAN
2334 W AUGUSTA AVE
PHOENIX AZ 85021-6825

FINANCIAL SERVICES-CCC
REMAND DESK CR-CCC
SOUTH MESA-GILBERT JUSTICE COURT

MINUTE ENTRY

SOUTH MESA/GILBERT JUSTICE COURT

Cit. No. #CR01-01515MI

Charge: INTERFERING WITH JUDICIAL PROCEEDINGS, CL 1 MISDEMEANOR

DOB: 10/17/69

DOC: 04/23/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement since oral argument on September 18, 2002. This Court has reviewed and considered the record of the proceedings from the South Mesa/Gilbert Justice Court, and the Memoranda submitted by the parties.

Sean Urian Spillman is charged with Interfering With Judicial Proceedings, a class 1 misdemeanor offense, in violation of A.R.S. Section 13-2810(A).

The first issue raised by the Appellant is that he was denied his right of counsel. Though not specifically stated by the Appellant, this Court understands the Defendant's claim to be a denial of his alleged right to appointed counsel. The record is devoid of any evidence that the Appellant is indigent. Arizona Rules of Criminal Procedure, Rule 6.1(b) provides:

> An indigent Defendant shall be entitled to have an attorney appointed to represent him or her in any criminal proceeding which may result in punishment by loss of liberty and in any other criminal proceeding in which the Court includes that the interest of justice so require.

The law at the federal level is clear. The United State's Supreme Court in Scott v. Illinois[1], held that an indigent Defendant charged with shoplifting was not entitled to appointed counsel even though the possible sentencing range was up to one year imprisonment, but imprisonment was not imposed. There are no authorities holding that Arizona has standards which exceed the federal standards regarding appointment of counsel.[2]

[1] 440 U.S. 367, 99 S.Ct. 1158, 59 L.Ed.2d 383 (1979).
[2] Campa v. Fleming, 134 Ariz. 330, 656 P.2d 619 (App.1982).

In Campa v. Fleming[3], Division 2 of the Arizona Court of Appeals held that the Defendant was not entitled to a court appointed attorney where the Defendant was charged with Shoplifting, a class 1 misdemeanor offense, but the prosecutor avowed that no jail time would be requested, and the City Court judge ruled that no jail time would be imposed.

In the instant case, Appellant was not sentenced to any jail time. Appellant was placed on probation and ordered to perform 100 hours of community service and to participate in Anger Management counseling. Therefore, Appellant is not entitled to a court appointed attorney and the trial court did not err in refusing his request.

Appellant also claims that he was denied his right to a trial by jury. Appellant argues that the possibility of six (6) months imprisonment and a $2,500.00 fine renders the offense serious and not "petty". This appears to be a case of first impression involving A.R.S. Section 13-2810. This Court was unable to discover any reported cases in Arizona dealing with the issue of a right to jury trial to persons charged with Interfering With Judicial Proceedings.

The Federal Law is not helpful in regard to this issue. The United States Constitution requires that if a crime is punishable by more than six (6) months of incarceration, it is not a petty offense and the accused must be afforded the right to a jury trial.[4] Arizona has, in fact, extended the right of a jury trial much further than guaranteed by the United States Constitution.[5] The Arizona Supreme Court in McDougall[6], listed four factors to evaluate in determining the right to a jury

[3] Id.
[4] Lewis v. United States, 518, U.S. 322, 116 S.Ct. 2163, 135 L.Ed.2d 590 (1996); Blanton v. North Las Vegas, 489 U.S. 538, 109 S.Ct. 1289, 103 L.Ed.2d 550 (1989).
[5] State ex rel. McDougall v. Strohson, 190 Ariz. 120, 945 P.2d 1251 (1997).
[6] Id.

trial in the State of Arizona. The first three factors are found in Rothweiler v. Superior Court[7]:

1. The length of possible incarceration.
2. The moral quality of the act charged (sometimes referred to as the "moral turpitude" issue; and
3. Its relationship to common law crimes.

The fourth consideration comes from State ex rel. Dean v. Dolny[8], and requires that the Court evaluate whether additional serious or grave consequences might flow from the conviction.

The length of possible incarceration in this case is six (6) months imprisonment; the maximum possible sentence for all class 1 misdemeanors. This factor is not controlling as Defendants charged for other class 1 misdemeanors such as assault or disorderly conduct are not entitled to trials by jury.[9]

An evaluation of the moral quality of the act charged requires this Court to consider those facts which established Appellant's conviction. Appellant violated a Domestic Violence Order of Protection. Appellant was not charged with a crime involving dishonesty or fraud or any other type of crime involving a deficient moral character. This Court concludes the crime is not of such moral quality that a jury trial would be required.

In considering the relationship of the crime, Interfering with Judicial Proceedings to common law crimes, this Court notes the similarity of the crime charged to Criminal Contempt. A.R.S. Section 13-2810 is, however, a separate crime from

[7] 100 Ariz. 37, 410 P.2d 479 (1966).
[8] 161 Ariz. 297, 778, P.2d 1193 (1989).
[9] Goldman v. Kautz, 111 Ariz. 431, 531 P.2d 1138 (1975); Bruce v. State, 126 Ariz. 271, 614 P.2d 813 (1980); O'Neill v. Mangum, 103 Ariz. 484, 445 P.2d 843 (1968).

Criminal Contempt. This offense of Interfering with Judicial Proceedings had no common law antecedents.

Finally, this Court concludes that there are no sufficiency grave collateral consequences of a conviction of the crime of Interfering with Judicial Proceedings that would entitle Appellant to a jury trial.

This Court, therefore, concludes that the trial court correctly denied Appellant's request for a jury trial in this case.

Appellant also contends that the State failed to prove beyond a reasonable doubt that he had a necessary intent to commit a wrongful act. Appellant's contentions challenge the sufficiency of the evidence to warrant his conviction. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.[10] All evidence will be viewed in a light most favorable to sustaining a conviction and all reasonable inferences will be resolved against the Defendant.[11] If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the verdict and against the Defendant.[12] An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.[13] When the sufficiency of evidence to support a judgment is questioned on

[10] *State v. Guerra*, 161 Ariz. 289, 778 P.2d 1185 (1989); *State v. Mincey,* 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); *State v.Brown,* 125 Ariz. 160, 608 P.2d 299 (1980); *Hollis v. Industrial Commission,* 94 Ariz. 113, 382 P.2d 226 (1963).
[11] *State v. Guerra*, supra; *State v. Tison*, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).
[12] *State v. Guerra*, supra; *State v. Girdler,* 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).
[13] In re: Estate of Shumway, 197 Ariz. 57, 3 P.3rd 977, review granted in part, opinion vacated in part 9 P.3rd 1062; *Ryder v. Leach*, 3 Ariz. 129, 77P. 490 (1889).

appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.[14] The Arizona Supreme Court has explained in *State v. Tison*[15] that "substantial evidence" means:

> More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.[16]

This Court finds that the trial court's determination was not clearly erroneous and was supported by substantial evidence.

The last issue raised by Appellant is that the sentence imposed which included an Anger Management Program and the requirement that he perform community service is an unlawful sentence. This argument is totally without merit as the trial court clearly possessed the authority pursuant to Arizona statutes to sentence him to serve up to six (6) months in the County Jail and any other intermediate sanction less than six months in jail.

This Court finds no error.

IT IS THEREFORE ORDERED affirming the judgment of guilt and sentence imposed.

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[14] *Hutcherson v. City of Phoenix,* 192 Ariz. 51, 961 P.2d 449 (1998); *State v. Guerra*, supra; State ex rel. *Herman v. Schaffer*, 110 Ariz. 91, 515 P.2d 593 (1973).
[15] SUPRA.
[16] Id. At 553, 633 P.2d at 362.

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IT IS FURTHER ORDERED remanding this matter back to the South Mesa/Gilbert City Court for all further and future proceedings in this case.